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July 11, 2019

VIA ECF AND FEDEX

The Honorable Anne Y. Shields
United States Magistrate Judge
100 Federal Plaza, Courtroom 830
Central Islip, NY 11722-9014

Re: United States v. John Drago, 18 Cr. 394 (SJF) (AYS)

Dear Magistrate Judge Shields:

In advance of the evidentiary hearing scheduled before Your Honor for July 23, 2019, concerning John Drago's motion to suppress (*see* Dkt. 57), we respectfully submit this letter on John's behalf, seeking to ensure that the planned witnesses have received appropriate process to confirm they will appear in court on the appointed date. We note that, at this time, we only make this request with respect to those four witnesses previously identified by the Government as the witnesses it intends to call in the first instance. (*See* Dkt. 48, 53)

As Your Honor is aware, the availability of the Government's agent witnesses was addressed by the parties at the June 11, 2019 conference before Your Honor, as well as in letters to the Court in the week that followed. Given the time pressures associated with John's financial situation, John had requested an earlier hearing date, but based on the Government's representations as to the availability of its principal witnesses, Your Honor ordered that the hearing be scheduled for July 23, 2019.

At the June 11 court conference, we made clear that, depending on what is revealed in the testimony of those initial witnesses, it may be necessary to hear testimony from other law enforcement agents who also participated in the August 2013 search. Your Honor agreed, making note of that possibility in the Court's Report and Recommendation dated June 25, 2019. (*See* Dkt. 57, at 23-24).

On July 2, 2019, we asked the Government to confirm the availability of its four principal witnesses – IRS Special Agents David Darjenia and Michael Snedeker, former IRS Special Agent Michael Scaringi, and Suffolk County District Attorney's Office Detective Investigator Joseph Miceli – as well as other agents present at the search, in the event that their testimony became necessary. (*See* Drago's July 2, 2019 Letter, attached as Exhibit A).

On July 9, 2019, the Government reconfirmed its prior representations concerning the availability of Agents Darjenia, Snedeker, Scaringi, and Miceli, as previously set forth in letters to Your Honor. The Government also explained in its letter that, "[b]ased upon communications with the

IRS Chief Counsel's Office, individual service of subpoenas for the witnesses you seek is required." (See Government's July 9, 2019 Letter, attached as Exhibit B). It is unclear from the Government's letter whether it believes that subpoenas are also necessary for its four principal witnesses, three of whom are IRS Agents (or were, at the time of the search in question).

To avoid any question of notice and process, and to ensure that the four witnesses specifically identified by the Government are present and available to testify on July 23, we respectfully request that Your Honor issue subpoenas for the testimony of IRS Special Agents David Darjenia and Michael Snedeker, former IRS Special Agent Michael Scaringi, and Suffolk County District Attorney's Office Detective Investigator Joseph Miceli.¹

We do not, at this time, request the issuance of subpoenas for the remaining agents. In the event that the testimony provided at the hearing on July 23 requires testimony from any of the remaining agents, we may request the issuance of subpoenas at that time. Further we are in the process of notifying the IRS Chief Counsel's office of the need for the testimony of the IRS agents, pursuant to the applicable regulations (*see, e.g.*, 26 C.F.R. § 301.9000-3(a)).

Thank you for your consideration.

Respectfully,



David M. Siegal

cc: AUSA Burton Ryan

Enclosures (2)

¹ The four witnesses identified by the Government were all present at the August 6, 2013 search, as well as the related pre-operational meeting. Agent Snedeker executed the affidavit supporting the application for the warrant, and the Government asserts he led the search. Detective Miceli purportedly also led a team of agents during the search. And as Mr. Drago attested in his November 30, 2018 affidavit, Agents Darjenia and Scaringi spoke to him about the search warrant during its execution. *See* Dkt. 24-23, ¶ 5.

The remaining potential witnesses – Agents Alice Wong, Sergei Kushner, John Carrano, Lani Rosado-Espinal, Cindy Hearn, Shawn Chandler, Yves Huziker, Eric Jonke, Eric Nieves, and Julie Okonowitz; former Agents Tom Bishop, Neil Cohen, and Paul Rooney, and former Suffolk County Detective Investigator Don Conste – were listed attendees at the pre-operational briefing, and all are believed to have been present at the search itself. Further, according to the search inventory logs, Agents Wong, Kushner, Hearn, Carrano, and Rosado-Espinal, Chandler, Huziker, Jonke, Okonowitz, and Nieves, and former Agent Rooney, seized and logged items during the search.